

U.S. SPECIAL OPERATIONS AND MILITARY CRIME:
THE POST-9/11 WARTIME CRIMES OF U.S. SPECIAL OPERATIONS FORCES
COMPARED TO THE CONVENTIONAL U.S. MILITARY

by
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Abstract

In this study, both the proximate causes and underlying theory of the military crimes of U.S. Special Operations Forces (SOF) are found to differ from those seen within the conventional U.S. military. Conventional military crimes tend to be dispositional, where the personality of the individual is more at play as opposed to situational factors. In contrast, SOF crimes are better described by a situationist model in which situational factors, primarily SOF culture, are more to blame than the individual. Military crimes, defined as actions committed by deployed U.S. service members that are in violation of the UCMJ and associated with one's professional duties or in violation of the Law of Armed Conflict, are detrimental to U.S. national security and the overall efficacy of the U.S. military. They can act as a spoiling attack for peace talks, provoke reprisal attacks by the enemy, and reduce the prestige of the armed forces in the eyes of the U.S. population and the world at large. In recent years, U.S. military strategy has relied increasingly on the use of SOF rather than conventional military forces, raising the status of the SOF organization and the potential repercussions of their military crimes.

Using a Grounded Theory research methodology to analyze a collection of crimes within the two organizations, four proximate causes for conventional military crimes are discovered, along with three proximate causes for SOF crimes. These causes are significantly different, although one cause is shared between the groups: personal greed. The differences are due to the unique SOF selection, training, and education processes, as well as a SOF culture that has excessively valued combat in the post-9/11 years at the expense of leadership, discipline, and ethical decision making.

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Introduction

This research finds that the military crimes of U.S. Special Operations Forces (SOF) differ significantly from those of the conventional¹ U.S. military in terms of 1) the proximate causes of individual crimes and 2) the theory that best explains the root causes of each organization's crimes as a whole. The proximate causes of SOF military crimes are Pushing Boundaries, Excessive Individual Action, and Personal Greed. In contrast, the proximate causes found for conventional forces' crimes are Violent Desire Unrelated to Combat, Over Aggression Related to Combat, Personal Greed, and Systemic Disregard for Human Rights. These differing proximate causes suggest that the root causes of the organizations' military crimes are significantly different as well. The root cause of conventional forces' crimes is best explained by the dispositional theory, meaning that the individual is most to blame. SOF crimes, in contrast, are better explained by the situationist theory, where the surrounding features of the situation—in this case, primarily the SOF culture—are more to blame than the individual. These differences between the two organizations are due to what this study refers to as the “SOF Process” and the unique SOF culture.

The question at the heart of this research is “do the military crimes committed by U.S. SOF personnel differ from those committed by U.S. conventional military personnel? If so, how?” To answer these questions, this study follows a grounded theory qualitative research approach using constant comparative analysis to analyze the military crimes committed by the two organizations, determine the proximate cause of each

¹ This study defines conventional forces as all members of the U.S. military not in Special Operations Forces. However, the preponderance of criminal data available and used within the study are those of land-based forces of the U.S. Army, Marines, and Navy.

military crime, and ultimately develop a theory grounded in this data. The constant comparative analysis process involves identifying a phenomenon, identifying key concepts within that phenomenon, deciding how to categorize that data as the analysis takes place, and finally following a three-step coding process to create a theory from that data. This theory, outlined in the preceding paragraph and later discussed in depth, is substantive in nature and provides a framework for U.S. military decision makers and leaders to mitigate the national security risks associated with military crime.

Man—as both an academic and a battlefield practitioner—has been dogged by questions surrounding morality and proper conduct in warfare for thousands of years. Cicero famously said that “in times of war, the law falls silent,”² highlighting the inherent hypocrisy between the rule of law intended to protect society and the state-sponsored mass murder of war. Despite this paradox, mankind has worked diligently in recent centuries to create and enforce a code of legal conduct in war. In the U.S., this code is referred to as the Law of Armed Conflict, or LOAC, and is delineated in a Department of Defense Publication entitled the *Law of War Manual*.³ However, condensing the topic into a single publication obscures the complexity of the subject because the LOAC is not one clear set of laws; rather, it is an array of laws, regulations, and norms laid out by a series of international agreements landmarked by the Hague and Geneva Conventions, and it is continuously changing over time.⁴ The LOAC is confounded not only by the

² Paul MacKendrick, *The Speeches of Cicero* (London: Duckworth, 1995).

³U.S. Department of Defense, “Law of War Manual,” *Office of General Counsel, Department of Defense* (December 2016), <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.

⁴ Department of Defense, “Law of War Manual.”

changing character of warfare but also the changing nature of military forces themselves, such as the development of elite units known as SOF.

Governments and militaries around the globe have increasingly grown and relied upon these special operations personnel since the end of World War II. These forces are more experienced than their conventional force counterparts, being specially selected, trained, and educated to conduct the most dangerous and secretive operations on their nation's behalf; they are considered among the most elite and precious military resources that a nation can utilize to address a national security problem.

In the 21st century, no nation's special operations units have been more prolific than those of the United States. However, those same units have recently been "mired in scandal."⁵ U.S. SOF units—including U.S. Army Special Forces (Green Berets), Navy SEALs, and Marine Corps Special Operations Command (MARSOC) Raiders—famously conducted the post-9/11 mission to topple the Taliban, the raids to kill Osama bin Laden and the Islamic State leader Abu bakr Al-Baghdadi, and the preponderance of combat operations against the Islamic State in Iraq and Syria. Unfortunately, in recent years, these elite U.S. forces have become progressively known for their breaches of ethical and legal conduct as much as their successful exploits on the battlefield.⁶ As U.S. military strategy continues to shift towards one that is more SOF-centric,⁷ the repercussions of SOF military crimes will continue to grow and threaten U.S. military

⁵ Meghann Myers, "Spec Ops in Trouble: Mired in Scandal and under Pentagon Review, What Will It Take to Clean House?," *Military Times* (March 13, 2019), <https://www.militarytimes.com/news/your-army/2019/03/13/spec-ops-in-trouble-mired-in-scandal-and-under-pentagon-review-what-will-it-take-to-clean-house/>.

⁶ Myers, "Spec Ops in Trouble."

⁷ Daniel Byman and Ian Merritt, "The New American Way of War: Special Operations Forces in the War on Terrorism," *The Washington Quarterly* 41, no. 2 (July 5, 2018).

strategy, as well as the long-term viability of the SOF units so heavily relied upon in recent years.

Military Crimes and National Security: A Self-Inflicted Spoiling Attack

The study and prevention of military crimes is significant for national security because such crimes can—and often do—act as a type of self-inflicted “spoiling attack” at the strategic level. In the military, a spoiling attack is used by one force to impair or inhibit an opposing force in the planning or preparation phase or to affect the progress of negotiations. In an insurgency, for example, a more militant wing of the rebellion—less open to negotiation or a political solution to the conflict—may conduct a materially destructive and lethal spoiling attack in a city center to slow or even halt the peace process. The goals of the attack are far greater than simply the loss of life or destruction of the city. The psychological and political repercussions can cease high-level strategic communication between the two sides of the conflict and extend the bloodshed indefinitely. Similarly, military crimes function as self-inflicted spoiling attacks by damaging strategic level peace talks, inspiring enemy reprisal, and damaging the prestige of the armed forces.

U.S. military crimes, particularly those of atrocious or inflammatory natures, can function as self-inflicted spoiling attacks in three ways. First, on multiple occasions in the post-9/11 War on Terror, military crimes committed by U.S. personnel have slowed or halted ongoing peace negotiations conducted at the highest levels of the U.S. government.⁸ Second, they can catalyze enemy reaction and provide the enemy not only

⁸ David Alexander, “Taliban Threatens Revenge as Alleged Afghan Massacre Soldier Robert Bales Charged with 17 Counts of Murder,” *The National Post* (March 23, 2012), <https://nationalpost.com/news/taliban-threatens-revenge-as-alleged-afghan-massacre-soldier-robert-bales-charged-with-17-counts-of-murder>.

motivation and resolve but also valuable propaganda to undermine the legitimacy of U.S. operations.⁹ Third, military crimes undermine the trust that both the U.S. and world populations have in the U.S. military, reducing the efficacy of the armed forces and the likelihood of their use in future situations where they may be needed. To mitigate and reduce these risks, the U.S. must reduce the occurrence of military crimes. To do so, however, it is necessary to understand their circumstances and the nature of the forces likely to commit them.

What are Military Crimes? A Definition

For the purposes of this research, “military crimes” are defined as criminal (or allegedly criminal) actions conducted by uniformed U.S. military personnel while deployed outside of the U.S. that are either 1) in violation of the Uniform Code of Military Justice (UCMJ) AND significantly associated with one’s professional military duties abroad or 2) in violation of any of the various international agreements defining and limiting the conduct of armed conflict, broadly known as the LOAC. The first category includes crimes that are not traditional “war crimes” and that could not have been conducted without the scope of one’s professional duties offering unique opportunity—that is, either the perpetrator’s military role provides special access or the crime is directly related to one’s military job. For example, a drunken assault by a U.S. service member on another U.S. service member over a gambling debt on a secure military base abroad would not qualify; although it is in violation of the UCMJ and occurred abroad, the crime is not associated with the perpetrator’s professional duties. Thus, it is a simple crime and not a military crime. In contrast, the theft of U.S. funds that

⁹ Alexander, “Taliban Threatens Revenge.”

one has special access to as a part of their military duties while deployed would be considered a military crime because it involves one's professional privileges—the access to special funds—and is in violation of the UCMJ. The second category in the definition includes traditional “war crimes” in violation of the LOAC; these include crimes such as the illegal killing of enemy combatants or civilians, the rape of foreign nationals in wartime, the desecration of enemy bodies, or the taking of illegal war trophies.

This research eschews the more commonly used “war crimes” for two reasons. First, the term “war crimes” is cumbersome, as evidenced by the U.S. *Law of War* manual, which itself acknowledges different and competing definitions of the term¹⁰; it is also connotatively charged, which adds to the significantly cumbersome nature of its use. Second, such violations of the Law of Armed Conflict unnecessarily limit the types of crimes to be researched. By also including violations of the UCMJ that are strongly associated with professional military duties abroad, a clearer picture of the breaches of professional conduct within the profession of arms can be drawn. It is these breaches that this research intends to explore. For example, if the more restrictive “war crimes” was used, it would not allow the inclusion of military crimes conducted in Africa or South America because they are not declared theatres of armed conflict—or “war zones”—and may or may not involve the crimes outlined in the LOAC. The more inclusive “military crimes” accounts for these shortcomings.

¹⁰ Department of Defense, “Law of War Manual,” 163.

Literature Review: Two Theories of Military Crime and the Nature of SOF

Introduction

A review of the academic literature that informed this research will follow in three parts. First, an examination of the prominent theories regarding why any service member—not just those in elite units—may commit military crimes will broadly frame the research. Second, an analysis of the differences between SOF and conventional forces—as well as what makes the former unique in contrast to the latter—will highlight why it is reasonable to expect the two groups to differ in their military crimes. Together, these two sections will inform the research by engaging with the leading theories surrounding military crime and explaining why it is reasonable to expect the crimes of the two organizations to differ. Finally, an explanation of two identified gaps in the available research will explain a deficiency in the literature and place this study within the context of the scholarship as a whole.

This research is one of pragmatic social science, not psychology. Although much of the research in the field is from psychologists seeking to understand the psychological foundations and “true” causes of military crimes, this is neither the goal of this research nor the academic field of this author. Rather, a substantive social science approach is used—informed by the psychological literature—to compare the nature and facts of the cases studied and to provide an actionable theory to the U.S. military and security communities.

Literature Review Part I: Theories on Military Crime

Literature Review Part Ia: Situationist Theory

The first of two primary theories that seek to explain why soldiers commit military crimes is the “situationist theory.” This theory centers on situational factors such as unit culture, combat stress, military training, the peculiarities of warfare, and pressure from peers and superiors to explain why military personnel break the law. A number of prominent psychologists and sociologists suggest that these factors, in contrast to more individual factors such as personality or character, exert greater influence over a service member’s criminal behavior than is commonly assumed.¹¹ An important implication of this theory is that in general, modern Western understandings of character are inherently flawed because they do not acknowledge the significant extent to which an environment shapes one’s actions.¹² Philosophers, social scientists, and psychologists who share this view argue that it heightens the effects of factors commonly considered to be “in the background”—such as organizational culture and the peculiarities of military training—to a position of primacy that explains the motivations for criminal behavior in the military.¹³

These authors suggest that there are two primary factors associated with being a military member that are essential to understanding military crimes. The first is the psychological effects that combat and killing have on the human brain and character. The second—and more broadly applicable—factor involves the repercussions of ‘distal’

¹¹ Matthew Talbert and Jessica Wolfendale, *War Crimes: Causes, Excuses, and Blame* (New York, NY: Oxford University Press, 2019).

¹² John Doris, *Lack of Character: Personality and Moral Behavior* (Cambridge, UK: Cambridge, 2002)

¹³ Talbert and Wolfendale, *War Crimes*.

pressures on the service member.¹⁴ Distal pressures include both military training and military culture and are much more broadly relevant than the effects of combat stress; this is because while relatively few service members in modern conflicts actually kill an enemy, every service member experiences distal pressures.¹⁵ Situationist scholars also believe that the obedience to authority and psychological conditioning that are instilled in service members through training and repetition hinder their ability to say no to illegal orders or even to appropriately analyze orders that might be illegal.¹⁶ In short, proponents of this theory argue that the unique pressures of military service, culture, and combat affect a service member to such a degree that the service member cannot be reasonably held accountable for their moral judgements and decisions.¹⁷

The situationist theory offers a compelling argument with sound evidence and does well to explain why otherwise law-abiding members of society may commit military crimes when removed from their civilian lives and placed in a far-flung battlefield. However, competing theorists contend that the situationist explanation begs two related questions that are not sufficiently answered and that ultimately reduce the theory's credibility. The first question, often dubbed the "smile problem," inquires why some service members who commit military crimes seem to enjoy it—or "smile"—while others seem repulsed by their crimes.¹⁸ The second, and perhaps more challenging, question for the situationist theory is if the situational pressures of combat and military service are so severe as to cause military crimes for which the perpetrators are not

¹⁴ John Doris and Dominic Murphy, "From My Lai to Abu Ghraib: The Moral Psychology of Atrocity," *Midwest Studies in Psychology* 31, no. 1 (2007): 25-55.

¹⁵ Doris and Murphy, "From My Lai to Abu Ghraib."

¹⁶ Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, 3rd ed. (New York, NY: Back Bay Books, 2009).

¹⁷ Talbert and Wolfendale, *War Crimes*, 37.

¹⁸ Talbert and Wolfendale, *War Crimes*.

entirely to blame, then why do the majority of those who serve *not* commit military crimes?¹⁹ Situationist authors struggle to square these questions with their theory.

Dispositional theorists offer another critique of situationists aimed at the universal applicability of the theory. If the situational stressors of military service absolve one of moral blame, as the theory contends, do pressures in civilian life also absolve citizens of wrongdoing? Violence, death, distal pressures, and cultural bounds towards obedience are not solely domains of the military. If these factors absolve service members of moral and legal blame, then they can just as easily absolve every civilian criminal who has experienced similar pressures, according to dispositional authors.

Literature Review Part Ib: Dispositional Theory

In contrast to the situationist theory, proponents of the dispositional theory look to include a service member's self-perception, personal goals, and individual values to explain their military crimes. These authors argue that one's own character is of equal or greater importance compared to their environment to explain acts of military crime. Although these scholars do not dispute that many situational pressures can and do affect service members, they largely reject the situationist conclusions on two grounds.

First, they contend that the situationist account falls short by not explaining the weight that political and social schemas have upon a service member's ability to understand military events.²⁰ In other words, these authors mean that social constructs of abstract concepts that surround military crimes—for instance, “moral justice,” “respect for persons,” and “torture”—are taught by society long before military service and are

¹⁹ Talbert and Wolfendale, *War Crimes*.

²⁰ Talbert and Wolfendale, *War Crimes*, 56.

ingrained in one's character, not created as a result of military-specific distal pressures.²¹ This fact, dispositional authors argue, explains why some perpetrators of military crimes seem to almost paradoxically believe that their actions were ethically and legally sound despite their atrocious nature.²²

Second, dispositional theorists argue that their theory accounts for the human agency of service members, as well as their personal belief systems.²³ In contrast to the situationist theory, dispositional authors offer that these factors provide a more complete and well-argued explanation for military crimes. Additionally, the dispositional theory addresses the two problems left unanswered by the situationist theory. By explaining criminal motivations through a complex web of internal personality and external situational stressors, these theorists explain how one criminal actor may "smile" while another may grimace when engaged in the same criminal act. Furthermore, because this theory accounts for a wider array of individual factors, such as belief systems and upbringing, it can more accurately explain why some service members commit military crimes while many do not under the same situational pressures.

Ultimately, both theories have merit, and one should not be excluded in favor of the other. Rather, they should be seen as two parts of a whole that work together to explain military crime. In some situations, the first theory may be more applicable; for other crimes, the second theory might be superior. The dispositional theory is more aptly applied to military crimes that are characterized by a consciousness of guilt not aligned with the beliefs or culture of the organization. This theory also better accounts for the

²¹ Talbert and Wolfendale, *War Crimes*, 56.

²² Harold Weltzer, "Mass Murder and Moral Code: Some Thoughts on an Easily Misunderstood Subject," *History of Human Sciences* 17, no. 2 (2004): 15-32.

²³ Talbert and Wolfendale, *War Crimes*.

extensive array of reasons that civilian and military leaders have identified as the causes of war crimes, such as conditioned military compliance, racial and ethnic bigotry, ignorance of or lack of proper instruction on the rules²⁴, and others.²⁵ On the other hand, the situationist theory would be more applicable when the actor is not aware that they have committed an act outside of the bounds of legality because the action was within the norms of the culture and unit. In this case, the distal pressures of unit culture and expectations can better explain the committed or alleged crimes.

One area notably lacking in the literature, which will be further discussed in Part III of this literature review, is the differences between conventional and elite military units and the effects of those differences on military crimes. Special operations units are generally only included as examples in passing within the contexts of broader discussions, without specific consideration of the significant differences between special operations units and traditional military forces. It is to these important differences that that this study will turn next.

Literature Review Part II: Special Operations Forces

Literature Review Part IIa: “The SOF Process”: Specially Selected, Trained, and Educated

To understand why it is reasonable to expect SOF military crimes to differ from those of conventional forces, it is important to first understand how SOF personnel themselves differ from conventional military members. U.S. SOF personnel are specially selected, trained, and educated from the broader military force—a method summarized as

²⁴ Rules of engagement, or ROE, are military laws and orders outlining how force, including lethal force, can be used in warfare and against whom. They are boundaries set by the military authority in a given theatre and constrain how, when, in what way, and against whom military members can use force.

²⁵ Joanna Bourke, *An Intimate History of Killing* (Basic Books, 1999), 194.

the “SOF process”—to conduct the array of high-risk missions they are tasked with. These missions, known as special operations, are defined as “military activities conducted by specially designated, organized, trained, and equipped forces, manned with selected personnel, using unconventional tactics, techniques, and modes of employment.”²⁶ This definition highlights why a higher degree of professionalism and expectation is expected of special operations personnel; nations have invested more money, time, and energy into their training and employment. In comparison to their conventional counterparts, they have received significantly more technical and tactical skills training, are more mature and experienced, and are considered to be among the most professional warfighters in the world.²⁷

SOF units conduct this rigorous “SOF process” because of the spectrum and gravity of the challenges that they are tasked with. These challenges include traditional military threats from large states, irregular challenges from terror groups and non-state actors, catastrophic risks such as the employment of Weapons of Mass Destruction, and disruptive challenges such as setting conditions for future military engagements.²⁸ Accomplishing these missions requires a more mature, agile, and adaptable force than the conventional military can offer. To prepare them for these varied and strategically important missions, the “SOF process” includes not only instruction on the tactical and

²⁶ North Atlantic Treaty Organization, “Allied Joint Doctrine for Special Operations,” *NATO Standard Allied Joint Publication*, December 13, 2013.

²⁷ Daniel Brown and Paul Szoldra, “Why Green Berets Are the Smartest, Most Lethal Fighters in the World,” *Business Insider*, April 15, 2015, <https://www.businessinsider.com/green-berets-army-special-forces-intelligent-well-trained-deadly-2013-3>.

²⁸ Department of the Army. *FM 3-05 Army Special Operations Forces*. Department of Defense, 2006.

technical machinations of warfare but also extensive education in leadership, the laws surrounding armed conflict, and ethical decision making.²⁹

Although all steps of the process are important, it is the selection event that fundamentally shapes the organization as a whole. In the same way that a gardener improves his harvest by properly selecting the right seeds before he sows, the selection process creates a higher quality pool of personnel for the remaining portions of the “SOF process” to cultivate. The United States Army Special Operations Command rightfully boasts that it selects its personnel on attributes such as “*intelligence, physical fitness, motivation, trustworthiness, accountability, maturity, stability, judgment...* [emphasis added],”³⁰ personal qualities that, if correctly selected for, can be expected to change the likelihood or nature of SOF military crimes compared to the broader military force. It is because of this unique selection, training, and education process that one can expect SOF personnel to commit military crimes under different circumstances than conventional forces. As is true in many areas of life, one should expect that superior experience, practice, repetition, and education will lead to superior, or at least different, results.

Literature Review Part IIb: A Crisis Within SOF?

As noted in the introduction, despite the additional time, energy, and money invested in the “SOF process,” SOF personnel are not immune to military crimes by any means. A 2019 Comprehensive Report by the United States Special Operations

²⁹ Dick Couch, *Chosen Soldier* (New York, NY: Three Rivers Press, 2008); Jonathan Kinsley, “Special Forces Values: How the Regiment’s Ethical Framework Influences Its Organizational Effectiveness,” *The NPS Institutional Archive*, 2017, https://calhoun.nps.edu/bitstream/handle/10945/56744/17Dec_Kingsley_Jonathan.pdf?sequence=1&isAllowed=y.

³⁰ United States Army Special Operations Command, “Special Forces - Shooters and Thinkers,” Army Knowledge Online (Headquarters, U.S. Army, October 26, 2009), https://www.army.mil/article/29315/special_forces_shooters_and_thinkers.

Command (USSOCOM) is the best source of literature on the professional conduct and military crime issues plaguing U.S. special operators in recent years.³¹ The report was triggered by a string of high-profile breaches of ethical and legal conduct by the special operations community in the latter years of the 2010s. These military crimes weakened the prestige of the SOF organization and strained the U.S. public's trust in the elite military community. In the review, USSOCOM identifies a few potential reasons for the recent failings within their organization. Most notably, the report finds that an overemphasis on lethal combat operations in the two-decade-long Global War on Terror has worked to the detriment of leadership, discipline, and ethical decision-making, eroding SOF culture.³²

Other potential reasons for the string of high-profile SOF military crimes are also related to the SOF obsession with "force employment." This includes a deterioration of the force due to disregarding necessary ethical training, an increased sense of entitlement, and SOF units located increasingly farther from the military commanders meant to mentor and shape them.³³ In summary, this report provides an important first step towards explaining why the nation's most elite units may be experiencing a crisis of ethics and military crime.

Literature Review Part III: Gaps in the Literature

A review of the literature reveals two gaps relevant to this research. The first gap explains shortcomings, or at least restrictive proclivities, in the existing science; the

³¹ United States Special Operations Command, "Comprehensive Review," *USASOC*, January 23, 2020, <https://int.nyt.com/data/documenthelper/6736-special-operations-forces-review/c93cf96d67c341b2d2c3/optimized/full.pdf#page=1>.

³² John Ismay, "Elite U.S. Forces Critique Themselves: Overused, Underled, Raid-Obsessed," *The New York Times*, January 29, 2020, <https://www.nytimes.com/2020/01/29/us/eddie-gallagher-us-military-special-forces.html>.

³³ Ismay, "Elite U.S. Forces Critique Themselves."

second is where this research places itself to contribute alongside the broader works on the subject. The first gap stems from the types of military crimes that are most researched and therefore available for review. It is mainly crimes on a grand strategic scale, such as the Holocaust, or that deal with visceral violence, like the infamous My Lai massacre of 1968, that make up the research, in contrast to smaller, more personal, and less salacious crimes.³⁴

This is not without good reason. Certainly, larger crimes like the Holocaust or the genocide in Rwanda (another oft-cited event in the literature) have many more data points to gather and analyze. Scholars in this field suffer from the same shortcoming that every criminal researcher does—they can only research the crimes of those who have been caught or identified. Larger atrocities that involve more personnel are simply more likely to be discovered and therefore researched.

It seems that the tendency to study acts of atrocious personal violence, compared to more mundane military crimes, is not due to the availability of data but rather to human nature. Crimes that shock the conscience and make for eye-catching headlines are simply more fascinating and, in turn, more likely to be read or purchased. Ultimately, these two factors leave a recognizable gap in the literature as a significant portion of military crimes probably does not exist on a large governmental scale or involve horrifying levels of violence.

The second gap that this study seeks to address is a lack of research comparing the military crimes of elite units to those of the conventional military. A review of the literature reveals a plethora of data regarding what separates SOF from the rest of the

³⁴ Sara Mackmin, “Why Do Professional Soldiers Commit Acts of Personal Violence that Contravene the Law of Armed Conflict?,” *Defence Studies* 7, no. 1 (March 2007): 65-89.

military such as the “SOF process,” superior experience, and expertise. However, very little research exists contrasting criminal activities within the two organizations. Here, many readers will rightfully wonder whether SOF personnel commit military crimes at the same *rate* as the conventional military. Although the author shares this curiosity, it is not the focus of this research due to practical limitations in the data. Because of the classified nature of special operations organizations, as well as the nature of modern U.S. military strategy, such a quantitative study is unfortunately not possible at this time. It is simply not possible to know how many special operations personnel are deployed around the globe at any given time in order to quantitatively compare their crime rates with those of the conventional force.

Literature Review Conclusions

The available literature on military crime and SOF provides two theories that seek to explain military crime and the differences between SOF and conventional forces. Military crime, like war itself, is deeply complicated and riddled with both a lack of clarity and unknowns that render the situationist and dispositional theories each viable in certain circumstances. The situationist theory places the primary blame on situational factors such as military culture, training, and combat. Situationist theorists contend that these forces have significantly greater effects on service members than is commonly understood. In contrast, dispositional theorists offer a competing theory that combines environmental stressors with one’s character, upbringing, and perception of abstract concepts to explain military crime.

The other variable in this research—the differences between SOF and conventional units—is, on the surface, less complicated but ultimately under researched.

SOF personnel are uniquely selected, trained, and educated, and they are more mature and experienced than their conventional counterparts. However, current research does little to compare the military crimes of these two organizations; also, the literature suffers from an over emphasis on large-scale war crimes and brutal personal violence, both of which might make for more eye-catching headlines or subject matter.

Methodology

This research primarily follows a grounded theory methodology as originally introduced by Glaser and Strauss in *The Discovery of Grounded Theory* in 1967.³⁵ As described by Glaser, Strauss, and other key researchers,³⁶ the data in this study are inductively analyzed to create meaning, and a theory is ultimately developed and grounded within these data.³⁷ The substantive theory derived from this research seeks to first assess and describe whether the proximate causes of military crimes differ between the two organizations and, secondly, if and how the root causes differ. To properly understand the unique circumstances surrounding the U.S.'s Global War on Terror, the data are temporally scoped to U.S. military operations from 9/11 until January 2020.

Within this framework, the cumulative effects of the “SOF process”—the unique selection, training, and education process that SOF personnel undergo—and the SOF culture are treated as an independent variable, while the nature of military crimes serves as the dependent variable. These variables are used to assess whether undergoing the “SOF process,” as well as the effects of SOF culture, influence occurrences of or details

³⁵ Barney Glaser and Anselm Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago: Routledge, 1999).

³⁶ Kathy Charmaz, *Constructing Grounded Theory* (London: Sage, 2014).

³⁷ Sharan Merriam and Elizabeth Tisdell, *Qualitative Research: A Guide to Design Implementation*, 4th ed. (San Francisco: Jossey-Bass, 2016), 1.

surrounding military crimes. The null hypothesis in this framework would find no significant differences between the military crimes of SOF and conventional forces. However, as will be described in the following sections, the null hypothesis can be safely rejected. Rather, the data suggest an alternative hypothesis: that SOF military crimes vary significantly from those committed by the conventional military, both in terms of proximate cause and explanatory theory.

The data collection method, sampling frame, and data analysis technique were specifically chosen to address the independent and dependent variables listed above. The data were primarily textual and collected from news articles, books, and other media reports about military crimes, as well as secondary sources containing key developments in the circumstances after the releases of news articles. A stratified purposeful sampling frame was used to ensure that the data covered the full spectrum of military crimes and not just those on a grand scale or involving atrocious violence, unlike the preponderance of previous research in the field. To that end, crimes of a relatively low intensity—such as financial theft—were selected along with more violent crimes for both SOF and conventional forces. The *constant comparative method* of data analysis was used to identify themes and similarities in the data, group like circumstances together, and analyze these relationships to create the grounded theory and framework that is the result of this research. These steps are outlined in the following section.

Data and Discussion

Introduction

The data and discussion sections of this research will follow in five parts. First, the data collection, data analysis, and analytical processes that led to the conclusions in

the discussion are further explained. Second, the conventional forces' framework and proximate causes are presented. Third, the framework and proximate causes for SOF are explained. Fourth, the four proximate causes for conventional forces are compared to those of SOF and shown to be significantly different. Finally, the substantive theory that is the capstone of this research is presented.

Data: Coding and Analysis Techniques

The data come from textual sources, primarily news articles, but also books and other media publications with significant findings regarding military crimes. These sources were chosen because they provide the most holistic view of the subject matter to include first-person accounts of the crimes, interviews, results and testimony from criminal trials, and the words and thoughts of others surrounding the crimes to better illuminate the events.

It is necessary to acknowledge two potential shortcomings in the data. First, as with any criminal study, it is only possible to analyze crimes that have been discovered. It is possible that themes hidden in successful (and therefore undiscovered) crimes confound the data and analysis. Second, it is also possible that the inherent classified nature and secretive culture of SOF organizations either result in underreporting of military crimes or obscure their true nature. Although these shortcomings may have some merit, their protest is one of "what if"; that is, they indicate a problem but offer no real solution. In the end, analyzing the data available provides far greater benefit than not doing so simply because some potentially unknown data cannot be obtained.

A thorough inquiry of unclassified and open sources provided a total of 19 usable cases³⁸ involving conventional forces and 15 usable cases³⁹ involving SOF. These 34 total cases were open coded for various details and related factors surrounding military crime such as “alcohol or drug use,” “unclear rules of engagement,” “rape or sexual violence,” and “personal greed.” This type of coding involves not only simple interpretations of data, such as “were there multiple actors or were there not,” but also allows for nuanced interpretations of tone, deeper meaning, and theme. As an illustrative example of the coding process, consider the following passages from *The Kill Company*, a 2009 article in *The New Yorker* that centers on military crimes involving the conventional soldiers of Colonel Michael Steele’s 101st Airborne brigade:

- I. “We give the enemy the maximum opportunity to give his life for his country.”⁴⁰ The motto of the brigade while deployed and embodied by Colonel Steele.
- II. “A number of soldiers, among them General Peter Chiarelli, the Army’s Vice-Chief of Staff, believe that Steele set the conditions for a massacre by cultivating reckless aggressiveness in his soldiers, and by interpreting the rules of engagement in a way that made the killing of noncombatants likely.”⁴¹
- III. “‘We were *not* doing Arab cultural awareness,’ the senior officer recalled. ‘We were not doing Arabic-with-Iraqi-dialect language training.’ Instead, Steele instituted a harsh regimen of physical conditioning...and incessant practicing at the rifle range.”⁴²

These quotes illuminate a few facts surrounding the crimes committed by the soldiers in the unit. First, they establish the clear emphasis on aggression (the brigade motto and

³⁸ See Figure 3 on page 37 for a summary of these cases and their proximate causes.

³⁹ See Figure 4 on page 38 for a summary of these cases and their proximate causes.

⁴⁰ Raffi Khatchadourian, “The Kill Company,” *The New Yorker* (July 6 & 13, 2009): 2. <https://www.newyorker.com/magazine/2009/07/06/the-kill-company>.

⁴¹ Khatchadourian, “The Kill Company,” 3.

⁴² Khatchadourian, “The Kill Company,” 6.

focus on fitness and marksmanship) over cultural understanding (the lack of culture and language training). They also identify issues with superiors in the chain of command (General Chiarelli's comments) and the lack of clarity surrounding the ROE that played center stage in the crimes committed by the unit.

These materials and codes were then analyzed to derive both a proximate cause and shared characteristics for each of the 34 cases; cases were grouped together based on similar circumstances and assessed for relationships. Finally, a selective coding process was used to turn these conceptually-linked segments of data into the formal framework that follows in the discussion.

Discussion

Discussion Ia: Conventional Force Framework

Figure 1: Conventional Force Framework

Conventional Force Proximate Causes	Total Number of Cases	Characteristics
Violent Desire Unrelated to Combat	8	<ul style="list-style-type: none"> -Violent crimes unrelated to or not occurring during combat -Perpetrators are cognizant that they are committing a crime -Most likely of all categories to involve alcohol and/or drug use -High presence of racism/dehumanization of the enemy -High stress due to recent deaths of peers -Immaturity or inexperience of perpetrators -Often involves the taking of war trophies or desecration
Over Aggression Related to Combat	6	<ul style="list-style-type: none"> -Violent acts likely during combat -Perpetrators often not cognizant or certain whether they have committed a crime -Unclear rules of engagement from senior leaders -Not likely related to alcohol or drug use -High stress due to recent deaths of peers -Cover up likely -Both officer and enlisted personnel -Less likely to involve the taking of war trophies or desecration
Personal Greed	3	<ul style="list-style-type: none"> -Special access to financial assets -Belief that theft was “too easy” -Belief that they could not be caught -Affects officer and enlisted personnel
Systemic Disregard for Human Rights	2	<ul style="list-style-type: none"> -Large-scale disregard for human rights -Likely to involve multiple actors or entire units -Lack of accountability -Lack of proper training -High levels of immaturity or inexperience in perpetrators -Likely to involve rape or sexual assault -Affects officer and enlisted personnel

Discussion Part Ib: Conventional Forces Proximate Causes

The data on conventional forces' military crimes reveal four broad proximate causes that are best explained by the dispositional theory. This theory explains these crimes because they tend to be characterized by the personality and/or criminal decisions of the individual in rebuke of cultural norms (Violent Desire Unrelated to Combat) or the aggressive leadership style of a senior leader that obscures the ROE for their subordinates (Over Aggression Related to Combat). For the purpose of this research, the proximate cause is defined as the factor or group of factors closest to or most responsible for causing the military crime(s) considered. It is often helpful to use the "but for" test to help in determining proximate cause. For example, in the conventional force case of Captain Michael Nguyen, who was convicted of stealing nearly \$700,000 from U.S. contracts while deployed to Iraq, one can easily conclude that "but for" the personal greed of Captain Nguyen, the crime would not have occurred.⁴³ The four categories of proximate causes for conventional forces are as follow:

1. **Violent Desire Unrelated to Combat:** violent military crimes that are generally unrelated to or not committed during combat operations. That is, they are not decisions made "in the heat of the moment" (in direct engagement or combat with the enemy, where physiological arousal is occurring and higher-level judgment is inhibited); rather, they are premeditated actions by a perpetrator who is cognizant of the fact that they are committing a crime.

These crimes include premeditated murder, mass murder, rape, and assault,

⁴³ U.S. Attorney's Office, "Army Officer Sentenced to 30 Months in Federal Prison After Admitting Theft of Government Property Related to DoD Contracts in Support of Iraq War Army Captain Stole in Excess of \$690,000," *FBI - Portland Division* (May 3, 2010), <https://archives.fbi.gov/archives/portland/press-releases/2010/pd050310.htm>.

and they are often characterized by stress related to recent deaths of friendly personnel, the taking of war trophies or desecration of bodies, and illegal use of drugs or alcohol. They are usually committed by inexperienced and/or immature personnel. They are nearly universally considered criminal acts.

2. **Over Aggression Related to Combat:** violent military acts and crimes that are directly related to combat operations; that is, actions occurring “in the heat of the moment.” Due to a number of factors, primarily aggressive culture established by leaders and vague or unclear ROE, these service members are often unaware or uncertain of whether they did, in fact, commit a crime. Their crimes are more closely related to the proper conduct of military operations as opposed to those in the preceding category. There are often differing views or interpretations of the criminality of these acts.
3. **Personal Greed:** financial military crimes that involve either the theft of money or property or an illegal act with an intent to profit. These are characterized by special access to government or foreign funds.
4. **Systemic Disregard for Human Rights:** large-scale abuses conducted by multiple actors or entire units, characterized by a disregard for human rights and the proper conduct of prison and interrogation operations at the beginning of the wars in Iraq and Afghanistan. They involve a lack of accountability, lack of proper training for the activities a unit is tasked with, lack of oversight, a high degree of immaturity and inexperience, and are likely to involve rape or sexual assault.

Discussion Part Ic: Conventional Forces Framework Analysis – War Crimes and Crimes as a Result of War

The most salient of these proximate cause categories can be viewed as *War Crimes* and *Crimes as a Result of War*, both of which are best explained through a dispositional lens. The *War Crimes* category, encompassing “Violent Desire Unrelated to Combat” and “Systemic Disregard for Human Rights,” most closely fits the traditional understanding of war crimes because such crimes are in clear violation of the LOAC. The perpetrator knows they are committing a crime and is likely actively involved in the cover up of the offense; these crimes do not skirt the boundaries of ethical military conduct. Rather, they are widely considered heinous. The archetypal case in this category is the Mahmudiyah rape, mass murder, and desecration described in the book *Blackhearts: One Platoon’s Descent into Madness in Iraq’s Triangle of Death*.⁴⁴ In this case, the perpetrators are aware that their actions are, quite excessively, in violation of the LOAC and in no way related to legitimate military operations; they are active in the cover up of the offense, and their actions violate the norms of their unit, the military, and broader Western society. This case, like all cases of military crime, is not a simple affair to unravel, and its secondary and tertiary causes are numerous; however, one can be certain that “but for” the personal and violent dispositions of the perpetrators, the crimes would not have occurred. In this way, such crimes—and the proactive actions needed to mitigate them in the future—are best understood through the dispositional lens.

In contrast, the second category includes military crimes with an “Over Aggression Related to Combat” proximate cause and can be thought of as *Crimes as a*

⁴⁴ Jim Frederick, *Black Hearts: One Platoon's Descent into Madness in Iraq's Triangle of Death* (New York City: Random House, 2010).

Result of War. Although these events may in fact be crimes by a certain interpretation of the LOAC, they are not conducted with malicious intent and straddle the often vague boundary between the violence in warfare that is government-sanctioned and that which is not. The actions of Colonel Steele's conventional brigade in Iraq, as illustrated in the New Yorker article *The Kill Company*, form what is perhaps the prototypical case in this category.⁴⁵ The military crimes committed by the brigade are directly related to a legitimate military operation, the ROE are obscured by the aggressive personality of their commander, and the personnel involved are uncertain whether their actions are indeed military crimes or, conversely, if they are properly executing their commander's intent and the mission's requirements. Thus, if these actions are military crimes, they have more to do with the nature of warfare than the criminal predilections of the perpetrators. Nevertheless, they are best explained by the dispositional theory; it is the overly aggressive personality of a single actor or small group of actors—as opposed to distal pressures such as unit culture or military training—that obscures the battlefield and impedes the clarity needed by service members to make the difficult ethical decisions needed in combat.

⁴⁵ Khatchadourian, "The Kill Company."

Discussion Part IIa: SOF Framework

Figure 2: SOF Framework

SOF Proximate Causes	Total Number of Cases	Characteristics
Pushing Boundaries	8	<ul style="list-style-type: none">-Questionable or accidental kills likely during combat but within SOF cultural norms-Highly related to unit or SOF culture-High incidence of bending or pushing ROE to the limits-Involve greater unknowns than conventional force crimes-High likelihood of cover up-Perpetrators often not cognizant or certain whether they have committed a crime
Excessive Individual Action	4	<ul style="list-style-type: none">-Violent acts or kills outside of SOF cultural norms and/or ROE-Likely to involve personal difference from SOF culture/accepted behavior-Perpetrators are often cognizant that they are committing a crime
Personal Greed	3	<ul style="list-style-type: none">-Special access to financial assets-Belief that theft was “too easy”-Likely to occur both in and out of war zones due to nature of SOF activities

Discussion Part IIb: SOF Proximate Causes

The proximate causes for SOF military crimes fall into three categories:

1. **Pushing Boundaries:** violent military acts and crimes occurring during or as a direct result of legitimate combat operations, primarily characterized by the SOF culture prioritizing force employment and the bending of the ROE, at times to an extreme. These events are the most ambiguous of all the categories studied; they are often obscured by cover ups or protected by SOF culture. It is often unclear whether a crime occurred, and interpretations of the events

vary significantly. Nevertheless, they are usually in pursuit of a legitimate military end state. This proximate cause category is similar to the conventional force category of “Over Aggression Related to Combat” in many ways; however, there are two key differences. First, the SOF “Pushing Boundaries” crimes tend to be in line with the unit culture and the expectations of leaders and the conventional force “Over Aggression Related to Combat” cases tend not to. This causes the potential military crimes to be viewed very differently in any subsequent investigation or inquiry. Second, the SOF “Pushing Boundaries” cases are not typified by a lack of understanding or clarity about the ROE like the “Over Aggression Related to Combat” cases. Rather, the SOF cases are committed with confidence and understanding of the ROE even as they are pushed to their limits.

2. **Excessive Individual Action:** violent crimes that occur clearly outside of the established ROE and/or cultural norms of SOF. They are committed by an individual actor and are often looked down upon by the SOF community at large. Perpetrators are often cognizant that they are committing a crime, and interpretations of the event do not vary greatly.
3. **Personal Greed:** financial military crimes that involve either the theft of government money or property or an illegal act with an intent to profit. These are characterized by special access to government or local funds. Due to the nature of SOF operations, these acts occur both within and outside of war zones.

Discussion Part III: Framework Comparison – Different Organizations, Different Military Crimes

A comparison of these two frameworks shows significant differences between SOF and conventional forces' crimes. Broadly, conventional forces' crimes align better with the dispositional theory, while SOF crimes align best with the situationist theory, as discussed in the literature review. Conventional forces' crimes, heavily influenced by personal decisions to commit violence and often involving awareness that the acts are criminal, fit the theory posited by dispositional authors; this suggests that the conventional military is either unable to screen for this criminal predilection in a service member's personality or unable to prevent such acts during wartime. In contrast, SOF crimes are heavily related to pushing the boundaries of a legitimate military mission and are influenced more by SOF culture than by an individual's criminal disposition or an overly aggressive leadership personality. These crimes fit the situationist model and suggest that SOF culture, which is overly focused on combat operations (to the detriment of the force as a whole), has a greater effect on the SOF community than is commonly recognized.

Notably, in one particular area, the two organizations seem afflicted by the same condition: personal greed. Despite the "SOF process," which is seemingly effective in limiting atrocities and producing experienced warfighters, SOF personnel do not seem demonstrably more inoculated against financial military crimes. The explanation for this problem is again, in all likelihood, the combat-focused culture of SOF. The over emphasis on force employment has reduced the ability of the SOF enterprise to protect itself from financial crimes; this has likely occurred by removing the leadership structures

from organizations, eroding team cohesion and bonds, and prioritizing mission accomplishment over training on leadership and ethics that could protect the force from such crimes. These findings support the work described in the 2019 *Comprehensive Report* by USSOCOM suggesting that an over emphasis on combat operations in the Global War on Terror has eroded the leadership architecture and ethical decision making within SOF. By pushing itself as hard and as fast as possible and becoming a results-oriented (as opposed to a values-oriented) organization, SOF leadership has likely ignored—or at least under emphasized—proper training and education to prevent military financial crimes.

The final conventional forces' proximate cause, Systemic Disregard for Human Rights, was due in large part to the culture of the U.S. government and military at the beginnings of the wars in Iraq and Afghanistan; this is less applicable to the current SOF enterprise, at least for now. These crimes, made famous at Abu Ghraib prison in Iraq during the early years of the wars, consisted of mental, physical, and sexual assault and torture at detention facilities. The proximate cause of these crimes is twofold. First, the U.S. military was relatively inexperienced in the actual conduct of warfare after the relative peace following the end of the Cold War and first Gulf War. Second, and perhaps more importantly, a systemic culture encouraged and allowed crimes like these to occur, from the strategic to the tactical level. In short, the U.S. was hurt and “out for blood” and, in pursuit of this goal, eschewed proper restraint and conduct in detention operations. For better or worse, two decades of continuous combat have culled both the inexperience of the military and the post-9/11 lust for revenge, rendering this category less applicable to current U.S. military operations. However, if such an emotionally significant attack on

the U.S. homeland or people should happen again, the lessons should be revisited, lest the U.S. fall victim to the criminal sins of her past.

Discussion V: SOF vs Conventional Forces Crimes: A Theory

Ultimately, this research finds that the military crimes of U.S. SOF differ significantly from those of the conventional U.S. military in terms of 1) the proximate causes of the individual crimes themselves and 2) the theoretical model that best explains their root causes. As evidenced in the preceding sections, the proximate causes for conventional forces' crimes are Violent Desire Unrelated to Combat, Over Aggression Related to Combat, Personal Greed, and Systemic Disregard for Human Rights. In contrast, the proximate causes of SOF military crimes are Pushing Boundaries, Excessive Individual Action, and Personal Greed. These differences in proximate causes suggest that the underlying root causes of the two organizations' military crimes differ as well. Conventional forces' crimes tend to be dispositional in nature, while SOF military crimes are better explained by the situationist theory. These differences between the two organizations are explained by two variables: the "SOF Process" and SOF culture.

The "SOF Process" works to protect the SOF organization from dispositional crimes. These crimes, where the personality of the individual is more at play than situational factors, are mitigated by SOF selection, training, education, and experience, which create a force of personnel less likely to act against cultural norms. First, the exclusive selection process ensures that SOF personnel are trustworthy, intelligent, and dependable.⁴⁶ In this way, the selection process molds an organization from the ground

⁴⁶ Steven Bucci, "The Importance of Special Operations Forces Today and Going Forward," *The Heritage Foundation* (2015), https://www.heritage.org/sites/default/files/2019-10/2015_IndexOfUSMilitaryStrength_The%20Importance%20of%20Special%20Operations%20Forces%20Today%20and.

up that is less predisposed to the types of atrocious crimes seen widely in the conventional force, where personnel have not been specially selected for these traits.

Second, SOF personnel receive superior training and more education than conventional forces. The typical SOF member has “cultural and language training (most are masters of cross-cultural communication); has attended numerous advanced-skills schools; and has at least some college education, if not multiple degrees (this includes the enlisted ranks).”⁴⁷ This additional training and education serves to directly reduce dispositional risk factors such as racism, dehumanization of the enemy, lack of understanding of the ROE, and immaturity.

Third, SOF personnel are significantly more mature and experienced than conventional force personnel. The average SOF member has served in the conventional force for eight years before even attending SOF selection.⁴⁸ The SOF organization as a whole is “experienced and well-trained. The youngest personnel in SOF enter with extensive [conventional] experience, while the more mature members have, in some cases, been deployed in combat nearly constantly for more than a decade. It is possible that SOF are the most combat-experienced command in U.S. history.”⁴⁹ This experience reduces the likelihood that one will emotionally overreact in combat or misinterpret the intent of a commander or the ROE, circumstances that are commonly involved in conventional forces’ military crimes. However, although this extensive combat experience does well to protect the organization from dispositional crime, it has contributed to a culture that leaves SOF with misaligned values.

⁴⁷ United States Special Operations Command, *U.S. Special Operations Command Fact Book 2013*, p. 55, http://www.socom.mil/News/Documents/USSOCOM_Fact_Book_2013.pdf.

⁴⁸ Bucci, “The Importance of Special Operations Forces Today.”

⁴⁹ Bucci, “The Importance of Special Operations Forces Today.”

The erosion of SOF culture during the Global War on Terror has led to a disordered value system and leaves the organization vulnerable to situationist military crimes. SOF personnel, raised and surrounded by this disordered culture, are more likely to commit situationist military crimes that test or exceed the bounds of legality but are still within these misaligned SOF cultural norms. This disordered system places force employment—or lethal combat operations—on a pedestal at the expense of leadership, discipline, and ethical decision-making. SOF commands have regularly separated units from their leaders, neglected mentorship programs, and over incentivized service during combat; these shift the culture away from leader development and accountability and towards force employment as a nearly singular goal.⁵⁰ In this way, SOF leadership has cultivated a culture that values combat without the necessary leadership and ethical mentorship to ensure that operations are conducted properly and in alignment with laws and norms.

Additionally, this system of imbalanced values begins even before SOF personnel begin their special operations careers. USSOCOM found that at SOF initial entry training, where soldiers begin their SOF experience, there is an “overemphasis on physical training which often comes at the expense of Service-specific professional development and acculturation.”⁵¹ This early cultural misalignment is perhaps the most damaging, as it is likely to affect the organization for years or even decades. As these young personnel advance through the ranks to positions of senior leadership, they set and influence the unit culture that has contributed to situationist crimes.

⁵⁰ USSOCOM, “Comprehensive Review,” 33.

⁵¹ USSOCOM, “Comprehensive Review,” 42.

Significance of the Findings: Long-Term and Short-Term Risk Mitigation

These findings are significant in both the long and short terms as a means to mitigate the various risks associated with military crime. For U.S. military decision makers, the results are useful in the long term because they provide insights into how to mitigate future risks. They are also valuable in the short term for present-day military leaders as a tool to reduce the acute likelihood of military crimes taking place within their commands.

In the long term, conventional and SOF military decision makers need to be informed of such ethical shortcomings during their initial entry and training programs in order to produce a force that is less likely to commit military crimes. Those in charge of the conventional military training process should look to improve the assessment of individual personalities of those entering the service, as well as the training on ethical decision making provided during initial entry training. In a twenty-century battlefield where an atrocious war crime can be the most strategically significant act committed by an entire brigade, potentially outweighing the otherwise successful hard work of thousands, screening for and protection against dispositional military crimes cannot be neglected, and it cannot simply be taught in passing or “on the job.”

The SOF leadership community needs to do two things to reduce their risk associated with military crimes. First, they need to capitalize on the success of the “SOF process” and continue the selection, education, and training that have shown success in protecting the organization from dispositional crimes. Second, they need to cultivate a culture that, although tasked with dangerous and strategically significant operations, does not neglect leadership training or the importance of operations other than combat; this

culture must remain mission-focused within the legal boundaries provided by the U.S. government. In this way, SOF leaders need to bring the culture of the organization back into alignment with its values and mission.

In the short term, these findings provide military leaders of all levels with a list of warnings and risk circumstances that make their formations susceptible to military crimes. By understanding what events and risk factors leave a unit vulnerable to various criminal acts, a leader can act to mitigate those risks. For example, a conventional force commander whose unit has recently experienced friendly casualties and had issues with drug and alcohol abuse overseas may take the opportunity to embrace a more supportive and understanding command climate, rather than one over emphasizing aggression at the expense of individual service members' emotional health and ability to understand complex ROE. A SOF commander, knowing that they will have a small number of personnel with special access to government funds that might tempt personal greed, may opt to prioritize training in ethical financial decision-making, or perhaps a vignette illustrating the criminal repercussions of theft, in lieu of one extra combat training event.

To be clear, the author strongly and whole-heartedly agrees that the combat readiness of any military formation is paramount, and this research does not suggest otherwise. The ability of service members to successfully shoot, move, and communicate in combat cannot and should not be compromised. Nevertheless, this fact should not be used to eschew necessary training or education in other areas that support the holistic health of the organization. Put simply, combat operations may be the *most* important thing a unit is responsible for, but they are not the *only* thing.

Conclusion

Presented with a modern military battlefield that is confounded by a 1,000+ page *Law of War* manual, as well as ROE that can change at a moment's notice, Cicero may be tempted to amend his original quote—"in times of war, the law falls silent"—to read "in times of war, the law gets murky." The paradox of legally and ethically bound warfare that inherently sanctions mass murder makes the questions surrounding military crimes harder to define and answer than those surrounding civilian crimes. The literature surrounding military crimes seeks to answer fundamental questions about the psychology of these events, but it does not sufficiently cover the differences between elite and conventional military units. Furthermore, it suffers from an over emphasis on large-scale and atrocious crimes. To help fill this gap, this research compares the military crimes of U.S. SOF with those seen in the conventional U.S. military and finds that their proximate causes and underlying explanatory theories differ significantly. This is likely due to the nature of the "SOF process" and SOF culture which, when viewed together, protect U.S. SOF from heinous dispositional military crimes but also leave the organization more susceptible to military crimes influenced by excessive focus on force employment.

Further research in this area may look to study the ethical and legal educations during initial military entry training and the SOF training pipelines to see if they align with the proximate causes and risk circumstances identified within this study. This can then be used to adjust the training of personnel and thereby lower the risk of the "self-inflicted spoiling attacks" that military crimes can create. More immediately, military commanders should use the findings in this research to identify when and in what ways the organization is at risk of military crimes, using their knowledge of their formation and

their command authority to make risk-reductive changes. It is ultimately, of course, impossible to entirely eliminate crimes among U.S. service members abroad, just as it is impossible to eliminate crime in any sufficiently large population. However, by better understanding the proximate causes and underlying theories that explain military crimes, it is possible to reduce the dangers they pose to the victims, the prestige of the U.S. military, and U.S. national security.

Figure 3: List of Conventional Force Military Crimes Cases

	Conventional Force Military Crime Case	Military Crimes Committed	Proximate Cause	Secondary Causes
1	"Blackhearts" case	Rape, mass murder, desecration	Violent Desire Unrelated to Combat	Combat stress, issues with chain of command, drug and alcohol abuse
2	"The Kill Team" case	Mass murder, desecration	Violent Desire Unrelated to Combat	Combat stress
3	The Hamdania incident	Murder, kidnapping, housebreaking, theft, obstruction of justice	Violent Desire Unrelated to Combat	Combat stress
4	Robert Bales case	Mass murder	Violent Desire Unrelated to Combat	Drug and alcohol abuse, combat stress, mental health
5	Marines urinating on dead enemy bodies	Desecration	Violent Desire Unrelated to Combat	Inexperience
6	Two soldiers abusing detainees	Detainee abuse	Violent Desire Unrelated to Combat	
7	Michael Behenna case	Murder	Violent Desire Unrelated to Combat	Combat stress
8	Derrick Miller case	Premeditated murder	Violent Desire Unrelated to Combat	
9	Ilario Pantano case	Murder	Over Aggression Related to Combat	
10	Haditha killings	Mass murder	Over Aggression Related to Combat	Combat stress, cover up
11	Leahy and Mayo case	Mass murder	Over Aggression Related to Combat	Revenge
12	Clint Lorance case	Murder	Over Aggression Related to Combat	Inexperience
13	Nathan Sassaman case	Murder, drowning of civilians	Over Aggression Related to Combat	
14	"The Kill Company" and Michael Steele	Murder	Over Aggression Related to Combat	Aggressive command climate
15	Theft of millions by various U.S. service members	Monetary theft	Personal greed	
16	Stolen Iraqi cash case	Monetary theft	Personal greed	
17	Michael Nguyen case	Monetary theft	Personal greed	
18	Bagram detainee abuse	Detainee abuse, assault, sexual assault, manslaughter	Systemic disregard for human rights	Personal decision to commit crime, revenge
19	Abu Ghraib	Detainee abuse, assault, sexual assault	Systemic disregard for human rights	Personal decision to commit crime, revenge, racism

Figure 4: List of SOF Military Crimes Cases

	SOF Military Crime Case	Military Crimes Committed and/or Alleged	Proximate Cause	Secondary Circumstances
1	Mathew Golsteyn case	Murder	Pushing Boundaries	Revenge, combat stress
2	"The A-Team Killings"	Mass murder	Pushing Boundaries	Bending ROE, mission requirements to an extreme
3	SEAL Misconduct	Murder, assault, desecration, theft	Pushing Boundaries	Over aggressiveness, bending ROE to an extreme, culture, cover-up, revenge
4	Rogue SEAL Team	Murder, assault, desecration, theft	Pushing Boundaries	Revenge, culture, acceptance of violations
5	Staffel and Anderson case	Premeditated murder	Pushing Boundaries	Justifiable homicide, combat action
6	Detainee Abuse	Detainee abuse, assault	Pushing Boundaries	Unclear guidelines on interrogation, culture
7	Killing of two Afghan women, three other civilians	Mass murder	Pushing Boundaries	Bending ROE, mission requirements to an extreme, culture
8	Detainee abuse in Iraq	Detainee abuse, assault	Pushing Boundaries	Unclear guidelines on interrogation, culture
9	MARSOC convoy killings	Mass murder	Excessive Individual Action	Over reaction in combat, indiscriminate firing, inexperience
10	Eddie Gallagher case	Murder, desecration, detainee abuse	Excessive Individual Action	Combat stress, lust for violence
11	Assault of child molester / rapist	Assault	Excessive Individual Action	Personal outrage at child rape
12	Logan Melgar murder	Murder, assault, sexual assault, hazing,	Excessive Individual Action	Personal greed
13	SF theft of deployment funds	Monetary theft	Personal Greed	Special access to financial assets
14	SF cocaine smuggling	Drug smuggling	Personal Greed	Special access to resources
15	Chamberlain monetary theft	Monetary theft	Personal Greed	Special access to resources

Bibliography

- Akins, Matthieu. "The A Team Killings." *Rolling Stone* (November 6, 2013). <https://www.rollingstone.com/interactive/feature-a-team-killings-afghanistan-special-forces/>.
- Alexander, David. "Taliban Threatens Revenge as Alleged Afghan Massacre Soldier Robert Bales Charged with 17 Counts of Murder." *The National Post* (March 23, 2012). <https://nationalpost.com/news/taliban-threatens-revenge-as-alleged-afghan-massacre-soldier-robert-bales-charged-with-17-counts-of-murder>.
- Associated Press. "Ex-Green Beret Admits to Scheme to Take Cash Intended for U.S. Mission in Afghanistan." *ABC News* (January 14, 2020). <https://www.nbcnews.com/news/us-news/ex-green-beret-admits-scheme-take-cash-intended-u-s-n1115086>.
- Associated Press. "Marine Set to Be Tried for 3rd Time in Iraq War Crime Case." *The Military Times* (June 7, 2015). <https://www.militarytimes.com/2015/06/07/marine-set-to-be-tried-for-3rd-time-in-iraq-war-crime-case/>.
- Bourke, Joanna. *An Intimate History of Killing*. Basic Books, 1999.
- Brown, Daniel, and Paul Szoldra. "Why Green Berets Are the Smartest, Most Lethal Fighters in the World." *Business Insider*, April 15, 2015. <https://www.businessinsider.com/green-berets-army-special-forces-intelligent-well-trained-deadly-2013-3>.
- Brooks, Drew. "Appeal Denied for Former Army Officer Convicted of Afghan Murders." *The Fayetteville Observer* (no date listed). <https://www.military.com/daily-news/2017/08/17/appeal-denied-former-army-officer-convicted-afghan-murders.html>.
- Byman, Daniel, and Ian Merritt. "The New American Way of War: Special Operations Forces in the War on Terrorism." *The Washington Quarterly* 41, no. 2 (July 5, 2018).
- Chambers, Madeline. "U.S. Soldiers Say They Executed Iraqis On Riverbank: Report." *Reuters* (August 27, 2008). <https://www.reuters.com/article/us-iraq-usa-soldiers/u-s-soldiers-say-they-executed-iraqis-on-riverbank-report-idUSN2742059920080828>.
- Charmaz, Kathy. *Constructing Grounded Theory*. London: Sage, 2014.
- CNN Editorial Research. "Haditha Killing Fast Facts." *CNN* (March 18, 2020). <https://www.cnn.com/2013/10/30/world/meast/haditha-killings-fast-facts/index.html>.

- CNN Editorial Research. "Iraq Prison Abuse Scandal Fast Facts." *CNN* (March 22, 2020). <https://www.cnn.com/2013/10/30/world/meast/iraq-prison-abuse-scandal-fast-facts/index.html>.
- Couch, Dick. *Chosen Soldier*. New York, NY: Three Rivers Press, 2008.
- Desantis, John. "Marine Cleared in Deaths of 2 Insurgents in Iraq." *The New York Times* (March 27, 2005). <https://www.nytimes.com/2005/05/27/us/marine-cleared-in-deaths-of-2-insurgents-in-iraq.html>.
- Doris, John. *Lack of Character: Personality and Moral Behavior*. Cambridge, UK: Cambridge, 2002.
- Department of the Army. *FM 3-05 Army Special Operations Forces*. Department of Defense, 2006.
- Doris, John, and Dominic Murphy. "From My Lai to Abu Ghraib: The Moral Psychology of Atrocity." *Midwest Studies in Psychology* 31, no. 1 (2007): 25–55.
- Ismay, John. "Elite U.S. Forces Critique Themselves: Overused, Underled, Raid-Obsessed." *The New York Times*, January 29, 2020. <https://www.nytimes.com/2020/01/29/us/eddie-gallagher-us-military-special-forces.html>.
- Filkins, Dexter. "The Fall of the Warrior King." *The New York Times* (October 23, 2005). <https://www.nytimes.com/2005/10/23/magazine/the-fall-of-the-warrior-king.html>.
- Frederick, Jim. *Black Hearts: One Platoon's Descent into Madness in Iraq's Triangle of Death*. New York City: Random House, 2010.
- Gall, Carlotta. "U.S. Soldiers Are Charged with Assaulting Afghan Prisoners." *The New York Times* (October 31, 2005). <https://www.nytimes.com/2005/10/31/world/asia/2-us-soldiers-are-charged-with-assaulting-afghan-prisoners.html>.
- Glaser, Barney, and Anselm Strauss. *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Routledge, 1999.
- Golden, Tim. "In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths." *The New York Times* (May 20, 2005). <https://www.nytimes.com/2005/05/20/world/asia/in-us-report-brutal-details-of-2-afghan-inmates-deaths.html>.
- Grossman, Dave. *On Killing: The Psychological Cost of Learning to Kill in War and Society*. 3rd ed. New York, NY: Back Bay Books, 2009.

- Harte, Julia. "The Fraud of War." *Slate* (May 5, 2015). http://www.slate.com/articles/news_and_politics/politics/2015/05/u_s_troops_have_stolen_tens_of_millions_in_iraq_and_afghanistan_center_for.html.
- Hauser, Christine. "Green Beret Who Beat up Afghan Officer for Raping Boy Can Stay in Army." *The New York Times* (April 29, 2016). <https://www.nytimes.com/2016/04/30/us/green-beret-who-beat-up-afghan-officer-for-raping-boy-can-stay-in-army.html>.
- Khatchadourian, Raffi. "The Kill Company." *The New Yorker* (July 6 & 13, 2009). <https://www.newyorker.com/magazine/2009/07/06/the-kill-company>.
- Kinsley, Jonathan. "Special Forces Values: How the Regiment's Ethical Framework Influences Its Organizational Effectiveness." *The NPS Institutional Archive*, 2017. https://calhoun.nps.edu/bitstream/handle/10945/56744/17Dec_Kingsley_Jonathan.pdf?sequence=1&isAllowed=y.
- Mackmin, Sara. "Why Do Professional Soldiers Commit Acts of Personal Violence That Contravene the Law of Armed Conflict?" *Defence Studies* 7, no. 1 (March 2007): 65–89.
- Martinez, Luis. "Afghan President Hamid Karzai Calls USMC Video 'deeply disturbing,' 'inhuman'." *ABC News* (January 12, 2012). <https://abcnews.go.com/Blotter/afghan-president-calls-usmc-video-deeply-disturbing/story?id=15345410>.
- Merriam, Sharan, and Elizabeth Tisdell. *Qualitative Research: A Guide to Design Implementation*. 4th ed. San Francisco: Jossey-Bass, 2016.
- Myers, Meghann. "Former Army Green Berets Sentenced in Colombian Cocaine Smuggling Plot." *The Army Times* (May 1, 2019). <https://www.armytimes.com/news/your-army/2019/05/01/former-army-green-berets-sentenced-in-colombian-cocaine-smuggling-plot/>.
- Myers, Laura. "U.S. Soldier Gets 24 Years for Murdering Afghans." *Reuters* (March 23, 2011). <https://www.reuters.com/article/us-soldiers-crimes/u-s-soldier-gets-24-years-for-murdering-afghans-idUSTRE72M99H20110324>.
- Myers, Meghann. "Spec Ops in Trouble: Mired in Scandal and under Pentagon Review, What Will It Take to Clean House?" *The Military Times* (March 13, 2019). <https://www.militarytimes.com/news/your-army/2019/03/13/spec-ops-in-trouble-mired-in-scandal-and-under-pentagon-review-what-will-it-take-to-clean-house/>.
- No Author Listed. "U.S. Army Green Berets Admit to Stealing \$200,000 in Counter-Terrorism Cash." *Reuters* (January 14,

2020). <https://www.reuters.com/article/us-usa-military-crime/u-s-army-green-berets-admit-to-stealing-200000-in-counter-terrorism-cash-idUSKBN1ZD231>.

No Author Listed. "US Soldier Sentenced to Life in Prison for Afghan Civilian Murder." *The Guardian* (2011). <https://www.theguardian.com/world/2011/jul/28/us-soldier-life-prison-afghan-civilian-murder>.

No Author Listed. "US Soldiers Questioned Over Stolen Iraqi Cash." *The Irish Times* (April 24, 2003). <https://www.irishtimes.com/news/us-soldiers-questioned-over-stolen-iraqi-cash-1.473665>.

North Atlantic Treaty Organization. "Allied Joint Doctrine for Special Operations." *NATO Standard Allied Joint Publication*, December 13, 2013.

Philipps, Dave. "Anguish and Anger from the Navy SEALs Who Turned in Edward Gallagher." *The New York Times* (December 27, 2019). <https://www.nytimes.com/2019/12/27/us/navy-seals-edward-gallagher-video.html>.

Schiffrin, Nick, and Aleem Agha. "U.S. Vice Admiral Apologizes for Afghan Deaths." *ABC News* (April 8, 2010). <https://abcnews.go.com/WN/Afghanistan/special-forces-apologize-afghan-civilian-deaths-sheep/story?id=10320603>.

South, Todd. "Army Green Beret Major Pleads Not Guilty to Afghan Murder Charge." *The Army Times* (June 27, 2019). <https://www.armytimes.com/news/your-army/2019/06/27/army-green-beret-major-pleads-not-guilty-to-afghan-murder-charge/>.

South, Todd. "Leaked Documents Provide Details About Green Beret's Death Involving Navy Seals and Marine Raiders." *The Military Times* (April 18, 2019). <https://www.militarytimes.com/news/your-army/2019/04/18/leaked-documents-provide-details-about-green-berets-death-involving-navy-seals-and-marine-raiders/>.

Stein, Deanne. "Former Army Lt. Michael Behenna Wins Parole, to Be Released." *Oklahoma City News* 9 (February 12, 2014).

Talbert, Matthew, and Jessica Wolfendale. *War Crimes: Causes, Excuses, and Blame*. New York, NY: Oxford University Press, 2019.

United States Army Special Operations Command. "Special Forces - Shooters and Thinkers." *Army Knowledge Online*. Headquarters, U.S. Army, October 26, 2009. https://www.army.mil/article/29315/special_forces_shooters_and_thinkers.

- United States Special Operations Command. "Comprehensive Review." *USASOC*, January 23, 2020. <https://int.nyt.com/data/documenthelper/6736-special-operations-forces-review/c93cf96d67c341b2d2c3/optimized/full.pdf#page=1>.
- U.S. Attorney's Office. "Army Officer Sentenced to 30 Months in Federal Prison After Admitting Theft of Government Property Related to DoD Contracts in Support of Iraq War Army Captain Stole in Excess of \$690,000." *FBI - Portland Division* (May 3, 2010). <https://archives.fbi.gov/archives/portland/press-releases/2010/pd050310.htm>.
- U.S. Department of Defense. "Law of War Manual." *Office of General Counsel, Department of Defense* (December 2016). <https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190>.
- Vaughan, Brendan. "Robert Bales Speaks: Confessions of America's Most Notorious War Criminal." *GQ* (October 21, 2015). <https://www.gq.com/story/robert-bales-interview-afghanistan-massacre>.
- Von Zielbauer, Paul. "An Afghan Killed by U.S. Forces, but Was it Murder?" *The New York Times* (September 18, 2007). <https://www.nytimes.com/2007/09/18/world/americas/18iht-abuse.1.7547418.html>.
- Von Zielbauer, Paul. "Marine Testifies in Afghan Attack." *The New York Times* (January 8, 2008). <https://www.nytimes.com/2008/01/09/world/asia/09iht-marine.1.9096918.html?searchResultPosition=3>.
- Weltzer, Harold. "Mass Murder and Moral Code: Some Thoughts on an Easily Misunderstood Subject." *History of Human Sciences* 17, no. 2 (2004): 15–32.

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